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No. 294

In the Supreme Court of the United States

October Term, 1962

JOHN W. DE COLLINS, ET UX., PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	3
Conclusion	7
Appendix	8

CITATIONS

Cases:	
Cook v. *Tait*, 265 U.S. 47	3
Heiner v. *Donnan*, 285 U.S. 312	6
Statutes:	
Internal Revenue Code of 1939:	
Sec. 116(a)	2, 3, 8
Sec. 251(a)	2, 3, 8
Sec. 251(j)	2, 8
Internal Revenue Code of 1954:	
Sec. 911(a)	2, 3, 9
Sec. 931(a)	2, 4, 9
Sec. 931(i)	2
Revenue Act of 1950, c. 994, 64 Stat. 906, Sec. 220	4
Miscellaneous:	
H. Rep. No. 2319, 81st Cong., 2d Sess., p. 58 (1950–2 Cum. Bull. 380, 424)	4
S. Rep. No. 2375, 81st Cong., 2d Sess., p. 48 (1950–2 Cum. Bull. 483, 518)	5

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OPINION BELOW

The opinion of the Court of Claims (Pet. App. 3a–4a) is reported at 299 F. 2d 949. Its findings of fact and conclusion of law (Pet. App. 4a–10a) are not officially reported.

JURISDICTION

The judgment of the Court of Claims was entered on March 7, 1962 (Pet. App. 3a). Chief Justice Warren granted successive extensions of time to August 1, 1962, for filing taxpayers' petition for a writ of certiorari (Pet. App. 1a–2a). The petition was filed on August 1, 1962. The jurisdiction of this Court rests on 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the income tax imposed by Congress upon the income of United States citizens for services performed by them as employees of the United States in the Canal Zone is unconstitutional.

STATUTES INVOLVED

Sections 116(a)(1) and 251 (a) and (j) of the Internal Revenue Code of 1939 and Sections 911(a)(1) and 931(a) (1) and (2) and (i) of the Internal Revenue Code of 1954 are printed in the Appendix, *infra*, pp. 8–10.

STATEMENT

The facts as found by the Court of Claims (Pet. App. 4a–10a), are not in dispute (Pet. 2). As relevant here, they may be summarized as follows:

In 1953 and 1954 the taxpayers, citizens of the United States and residents of the Canal Zone, were employed by the Panama Canal Company and the Canal Zone Government (Pet. App. 4a, 6a). The Panama Canal Company is a corporate agency of the United States, which operates the Canal and its related business-type activities. The Canal Zone Government, a separate entity which is also part of the United States Government, is charged with the functions of civil government in the Canal Zone (Pet. App. 7a).

The taxpayers paid federal income taxes on the payments received from the Panama Canal Company and Canal Zone Government, filed claims for refund, and brought suit for a refund (Pet. 4a–6a). The Court of Claims, in a *per curiam* opinion, held that the tax did

not violate the due process clause of the Fifth Amendment and therefore the taxpayers were not entitled to recover (Pet. App. 3a–4a).

ARGUMENT

The taxpayers' claim that Congress has unconstitutionally subjected them to the federal income tax is without merit.

In the first place, it is clear that Congress had the power to tax the incomes of the taxpayers. In *Cook v. Tait*, 265 U.S. 47, the Court held that Congress has the constitutional power to tax the income of citizens of the United States, whether or not they are domiciled in the United States, and even if the income is derived from property or activities outside the United States. Consequently, American citizens residing in a possession of the United States and receiving income from the United States Government itself are surely within the taxing power of Congress.

It is also clear that Congress intended to exercise its constitutional power to tax the income of persons like the taxpayers here. Congress has exempted from the United States income tax, subject to certain limitations, earned income of *bona fide* residents of foreign countries from sources outside of the United States, except when this income has been paid by the United States or one of its agencies. Section 116(a)(1), Internal Revenue Code of 1939 (Appendix, *infra*, p. 8); Section 911(a)(1), Internal Revenue Code of 1954 (Appendix, *infra*, p. 9). This exemption is limited to residents of foreign countries; it does

not extend to residents of possessions or territories of the United States.

Similarly, Congress granted a partial exemption of income earned by citizens in possessions of the United States. To achieve this result, the Internal Revenue Code exempts citizens of the United States or domestic corporations from income tax, except on gross income from sources within the United States, if (1) 80 percent of their gross income for the three-year period ending with the close of the taxable year was derived from sources within a United States possession; or (2) 50 percent of gross income was derived from the operation of a trade or business within a possession of the United States. Section 251(a), Internal Revenue Code of 1939 (Appendix, *infra*, p. 8); Section 931(a), Internal Revenue Code of 1954 (Appendix, *infra*, pp. 9–10).

It was in this context that the statutes here involved were enacted. Section 220 of the Revenue Act of 1950, c. 994, 64 Stat. 906, added Section 251(j) of the 1939 Code (Appendix, *infra*, p. 9) (now Section 931(i) of the 1954 Code) (Appendix, *infra*, p. 10). This provision denies the partial exemption for income earned in possessions of the United States when the income is paid by the United States or its agencies. In effecting this change, Congress stated (H. Rep. No. 2319, 81st Cong., 2d Sess., p. 58 (1950–2 Cum. Bull. 380, 424)):

> Military and civilian personnel of the Government who are citizens of the United States are not exempt from income tax when they are stationed in any other part of the world, and

> their exemption while stationed in the possessions is not in any way related to the original purpose of section 251, which was to encourage American businesses in the possessions.
>
> Section 216 of your committee's bill eliminates the special treatment accorded the military and civilian employees of the United States Government and its agencies who are stationed in the possessions. Wages paid to them * * * will not be considered income from such possessions, in determining whether they are entitled to the benefits of section 251 of the Code, and will be subject to tax as income from sources within the United States.

Accord, S. Rep. No. 2375, 81st Cong., 2d Sess., p. 48 (1950–2 Cum. Bull. 483, 518).

It is not disputed that the language used by Congress carries out its intent and that the language does not exempt these taxpayers from the tax. The taxpayers do not deny that they are citizens of the United States, that the Canal Zone is a possession, and that its Government and the Panama Canal Company are agencies of the United States. Nor do they suggest that Congress lacks the power to classify taxpayers or that it would be an unreasonable and arbitrary classification for Congress to tax the income of citizen employees of the United States residing in a possession differently from the income of citizens who are not such employees.

It appears therefore that the taxpayers would have no complaint if Congress had drafted a separate provision specifying the tax liability of citizen-employees

of the United States or its agencies in possessions of the United States. The taxpayers' entire argument rests on the assertion that Congress has attempted to create an irrebuttable "presumption" that payments by the United States Government in the Canal Zone are derived from sources within the United States. The taxpayers claim this presumption is arbitrary when applied to them since they were paid by agencies of the government within the Canal Zone and outside of the United States, and the funds for these payments likewise came from the Canal Zone and not the United States. But Congress has not created a "presumption" at all; it has merely said that all income earned by American citizens as employees of the United States Government, even if the citizens are residents of foreign countries or United States possessions, shall be taxed on the same basis as income earned within the United States. And the taxpayers remain free to show any facts which do not bring them within the terms of the statute.

This Court's decision in *Heiner* v. *Donnan*, 285 U.S. 312, which is relied upon by the taxpayers (Pet. 12, 15–16), is in no respect comparable to the instant situation. That case held that Congress could not constitutionally presume that all transfers within two years preceding death were conclusively made in contemplation of death. The statute there involved created a conclusive evidentiary presumption with respect to a fact that was considered an essential prerequisite to Congress' power to tax. The other cases cited by taxpayers similarly rested on the assumption of lack of power in Congress to reach the same result

by other approaches. Here Congress classified certain income as taxable as a matter of law, not on the basis of a rule of evidence. As we have seen, there is no doubt of Congress' power to make this classification and tax the income in question.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JOHN B. JONES, JR.,
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DAVID O. WALTER,
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AUGUST 1962.

APPENDIX

Internal Revenue Code of 1939:

SEC. 116. EXCLUSIONS FROM GROSS INCOME.

In addition to the items specified in section 22(b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) [as amended by Sec. 148, Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 321, Revenue Act of 1951, c. 521, 65 Stat. 452]. *Earned Income from Sources Without the United States.*—

(1) *Bona fide resident of foreign country.*—In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in paragraph (3)) attributable to such period; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

* * * * * *

SEC. 251. INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

(a) *General Rule.*—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

* * * * * *

(j) [as added by Sec. 220, Revenue Act of 1950, c. 994, 64 Stat. 906] *Employees of United States.*—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

Internal Revenue Code of 1954:

SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES.

(a) *General Rule.*—The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) *Bona fide resident of foreign country.*—In the case of an individual citizen of the United States, who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in subsection (b)) attributable to such period; but such individual shall not be allowed as a deduction from his gross income any deductions (other than those allowed by section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

* * * * * *

SEC. 931. INCOME FROM SOURCES WITHIN POSSESSIONS OF THE UNITED STATES.

(a) *General Rule.*—In the case of citizens of the United States or domestic corporations, gross income means only gross income from sources within the United States if the conditions of both paragraph (1) and paragraph (2) are satisfied:

(1) *Three-year period.*—If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section) for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) *Trade or business.*—If—

(A) in the case of such corporation, 50 percent or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(B) in the case of such citizen, 50 percent or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

* * * * *

(i) *Employees of the United States.*—For purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

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